

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Phillip Lee Spears, Jr., #297965,)	
)	Civil Action No. 6:09-2800-PMD-KFM
Plaintiff,)	
)	<u>REPORT OF MAGISTRATE JUDGE</u>
vs.)	
)	
Jon E. Ozmint, Director of SCDC, et al.,)	
)	
Defendants.)	
_____)	

This matter is before the court on the plaintiff's motion for entry of default (doc. 94). The plaintiff, who is a state prisoner proceeding *pro se*, seeks relief pursuant to Title 42, United States Code, Section 1983. The plaintiff claims that employees within the South Carolina Department of Corrections ("SCDC") failed to protect him from an altercation with his cellmate in December 2008 at Lee Correctional Institution ("Lee") and that he received cruel and unusual punishment at the hands of other SCDC officials at Lee thereafter.

Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Local Rule 73.02(B)(2)(d), D.S.C., all pretrial matters in cases filed under Title 42, United States Code, Section 1983, are referred to a United States Magistrate Judge for consideration.

The plaintiff argues the defendants failed to timely respond to his motion to compel filed on June 9, 2010, and thus he is entitled to entry of default. First, entry of default is appropriate when a party fails to timely plead. Fed.R.Civ.P. 55. Here, there is no allegation the defendants failed to timely answer the plaintiff's complaint. Second, the motion to compel was filed on June 14, 2010, and the defendants timely filed their opposition on July 1, 2010. Based upon the foregoing, the plaintiff's motion (doc. 94) is meritless and should be denied.

It is so recommended.

August 11, 2010
Greenville, South Carolina

s/Kevin F. McDonald
United States Magistrate Judge